$~51

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7201/2019

CAPT. RAKESH KUMAR ..... Petitioner
Through Mr. Siddhant Buxy, Adv.

versus

AIRLINE ALLIED SERVICES LTD. & ANR. ..... Respondents
Through Mr. Jatin Ghuliani, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% 13.02.2020

Ld. counsel for respondent no.2 states that no counter-affidavit is required to be filed on behalf of the respondent no.2. Ld. counsel for the petitioner submits that no rejoinder is required to the counter-affidavit filed on behalf of the respondents. Let it be so.

The matter was heard in part in the pre-lunch session, and, now, when the matter is again taken up for further hearing, the counsel for the main contesting respondent no. 1 – Airline Allied Services Ltd. does not appear. The counsel appearing for another respondent - respondent no. 2 states that she has left for the day. It is unfortunate to observe such conduct of the counsel for respondent no. 1. The matter is however proceeded with further.

Heard.

The petitioner approached the Court seeking the following reliefs:

> *“ (a) Issue an appropriate Writ to declare that Respondent No. 1 has acted in violation of the Petitioner’s fundamental rights under Articles 14,*

19(1)(g) and 21 of the Constitution of Indian by denying payment of (i) his salary and allowances for the month of March 2019, ***(ii) salary for the six months of October 2015 to March 2016,*** *(iii) flying allowances as per the revised hourly rates after considering the six months period of September 2015 to February 2016 towards his length of service, (iv) issuance of a no-objection certificate (NOC) and (v) completion of other exit formalities;*

(b) Issue a Writ of Mandamus or any other Writ or order or direction in the nature of Writ of Mandamus directing the Respondent No. 1 and /or Respondent No.2 to pay to the Petitioner (i) his salary and allowances for the month of March 2019, (ii) salary for the six months of October 2015 to March 2016, (iii) flying allowances as per the revised hourly rates after considering the six months period of September 2015 to February 2016 towards his length of service, (iv) issue a no-objection certificate (NOC) to the Petitioner and (v) complete all other exit formalities of the Petitioner such as transfer of Provident Fund account to his present employer, payment of Gratuity amount, etc.;

(c) Issue a Writ of Mandamus or any other Writ or order or direction in the nature of Writ of Mandamus directing the Respondent No.1 to return to the Petitioner, all the undated cheques issued by the Petitioner, in Respondent No.1's possession;

(d) Issue a Writ of Mandamus or any other Writ or order or direction in the nature of Writ of Mandamus directing the Respondent No.1 to pay adequate amount of compensation to the Petitioner towards legal expenses, mental harassment and infringement of fundamental rights under Articles 14, 19 (1)(g) and 21 suffered by the Petitioner, solely due to the unconstitutional and mala fide conduct of the Respondent No.1."

During the course of hearing, ld. counsel for the petitioner states that the only surviving relief is with regard to the prayer made in clause (a) (ii).

In the submissions of the ld. counsel for the petitioner, the other reliefs prayed for have since been satisfied.

As regards the only relief, for which the instant petition is pressed, it emerges from the record that the parties have signed and executed a Fixed Term Employment Agreement, for short 'the FTEA' dated 01.06.2016 and, thereby, the petitioner is engaged as Commander by the respondent no. 1 for a fixed term of five years commencing from 01.01.2016 till 31.12.2021. It however, comes to be stated that the petitioner was remaining in employment of the respondent no. 1 since the year 2007, though, on the execution of fresh employment contracts from time to time, without any break.

At the onset, it would be relevant to observe, the respondent no. 1 is a subsidiary of the respondent no. 1 – Air India Limited, which is a wholly owned Government of India undertaking. Such a factual aspect is important to take note of for the reason that any arbitrariness in the decision making would be least expected from an establishment of Government. In the given background, the denial of any amount towards salary to the petitioner for six months, when, the petitioner is said to have been medically unfit to fly an aircraft, cannot be taken lightly.

It is the case of the petitioner that on account of a temporary disability to fly an aircraft, he was denied salary without seeking utilization of his services for any alternative duty. According to the petitioner, it was not only unduly harsh and arbitrary, it even impinged his fundamental right to have employment elsewhere to earn his livelihood in view of clause 2.8 of the FTEA, which, reads as under:

> *"2.8 **EXCLUSIVE SERVICE***
>
> *The Employee shall make himself/herself available for services of The Company at all times as per requirement of The Company. The Employee shall not without prior written consent of The Company engage in any business or activity whatsoever. The Employee shall not, for any period under This Agreement be employed by any person other than The Company or perform any services for any other entity other than The Company without specific written permission of the Managing Director/In-charge/COO of The Company or his Designated Representative. Such Written permission, if any, may be withdrawn at any point of time at the discretion of The Company."*

In the submissions of the ld. counsel for the petitioner, while the foregoing stipulation of FTEA prohibits the petitioner to engage in any employment other than with respondent no. 1 company, the petitioner being temporarily medically unfit, his services could have been utilized for Flight Roster purposes, as provided for under FTEA in clause 3.2, which, reads as under:

> *"3.2 DUTY HOURS*
>
> *The Employee agrees to faithfully and competently carry out all flying/ground duties and other duties assigned to him/her from time to time and as per Pilot duty/Flight Roster in accordance with the flight and duty time limitations (FDTL) stipulated by The Company and or by Regulatory Authorities from time to time."*

Drawing advertence to clause 10.5 of FTEA, ld. counsel for the petitioner also contends that the petitioner having been grounded due to medical reasons, the petitioner could not be denied salary and other admissible allowances as provided for under clause 10.1.

During the course of hearing, ld. counsel for the petitioner was queried as to what were the entitlements of the petitioner towards any of the leaves including the medical leaves and the guiding factors/principles therefor. In that regard, but for adverting to the response made by the respondent no. 1, which is a copy of the e-mail dated 12.02.2019, nothing emerges from the record. The relevant part of the said communication dated 12.02.2019 reads as under:

> *" 1.* ***Salary not received between April 2015 – March 2016****: As per the base leave records, you had utilized/exhausted all your entitled leaves (which you had availed due to your dengue treatment), subsequently as on December 31, 2015 you had only 1 PL in your account. You were marked loss of pay from the month September 2015 till February 28, 2016 as per Company norms. His increment for the particular period was not considered due to said reason. Accordingly you were not eligible for the increment for that particular period."*

A bare perusal of the foregoing communication of respondent no. 1 would show that respondent no. 1 has some norms for grant or refusal of the leaves, but, what are actually those norms relevant to the subject in hand, nothing emerges from the record. It is difficult to believe that a Government of India undertaking or any of its subsidiaries would not be following the norms of grant or refusal of the diverse leaves as may be applicable to the Central government employees, unless, it comes to be pointed out otherwise.

All these aspects are required to be looked into by the employer of the petitioner i.e. the respondent no. 1, in the first instance.

For the foregoing reasons, the instant petition is disposed of with a direction to the respondent no. 1 to treat the instant petition as a representation of the petitioner and consider the claim of the petitioner in the light of the applicable policy and/or the norms/guidelines for the grant of leaves within eight weeks from today, taking note of the observations made by this Court, by way of a speaking order, to be communicated to the petitioner immediately on the decision being taken. Should the petitioner be aggrieved of the decision taken, the petitioner would be at liberty to approach the Court afresh.

At this stage, ld. counsel for the petitioner submits that the petitioner having resigned, he has not yet been paid the undisputed amounts of dues payable to him. In the event, there are any undisputed amounts/dues payable to the petitioner by the respondent no. 1, same shall get remitted to him within the same period of four weeks from today.

The writ petition stands disposed off in the foregoing terms.

A. K. CHAWLA, J

FEBRUARY 13, 2020

acm